Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-651

PETER CACHUR,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859,

Respondent,

and

WESTERN ELECTRIC COMPANY, INC.,

Respondent.

BRIEF OF WESTERN ELECTRIC COMPANY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondent Western Electric Company, Inc., respectfully urges that the Petition for Writ of Certiorari filed herein be denied.

OPINIONS BELOW.

The Memorandum Opinion of District Judge Flaum of the United States District Court for the Northern District of Illinois granting summary judgment to Respondents Western Electric Company, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local 1859 is reprinted in Appendix 1 of

the Petition for Writ of Certiorari. That Opinion is not officially reported.

The unanimous and unpublished Per Curiam Orders and Opinion of a panel of the United States Court of Appeals for the Seventh Circuit affirming and adopting, *inter alia*, the Memorandum Opinion of the District Court, as its own, is reprinted in Appendices 2 and 3 of the Petition.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to 29 U. S. C. § 301(a).

QUESTION PRESENTED

Whether the District Court and Court of Appeals on review erred in granting summary judgment in favor of Respondents by ruling that Petitioner did not properly withdraw from the Union and that his subsequent discharge by Western Electric Company, Inc. for failure to tender dues was not wrongful.

COUNTERSTATEMENT OF THE CASE.

The original Complaint in this action was filed on August 30, 1974. Petitioner alleged a breach of the duty of fair representation by his statutory collective bargaining agent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859 and a breach of the collective bargaining agreement by his former employer, Western Electric Company, Inc. Petitioner claimed that he properly withdrew from membership in the Union, that the Union refused to recognize his withdrawal, and that the Company then discharged him for failure to tender dues as required by the parties' collective bargaining agreement.

The district court's Memorandum Opinion of January 27, 1977 accurately sets forth the facts in this case, many of which were misstated in the petition. For the convenience of the Court,

those findings of fact may be summarized as follows: Petitioner sent notices of withdrawal to the Union on February 27, 1967 and July 19, 1969. The escape periods authorized in the collective bargaining agreements from 1963 through 1971 were ten days after the effective date of the contract in 1963 (said effective date was December 19, 1963) and the final ten days of the 1967 contract which was subsequently modified to the ten days preceding July 25, 1971 by the membership. Accordingly, Petitioner's notices of withdrawal were untimely. Petitioner was advised that his attempt to withdraw was ineffective and that he remained a member of the Union with a continuing obligation to tender dues. Petitioner refused to tender dues and, pursuant to the union-security provisions of the collective bargaining agreement, he was terminated.

On January 27, 1977, the Honorable Judge Joel M. Flaum issued a Memorandum Opinion entering summary judgment for both Respondents. The court said:

> "[T]he court hereby enters summary judgment for defendants based on the *undisputed facts* that plaintiff did not successfully withdraw from the union and that his discharge on the basis of failure to pay dues was not a wrongful discharge. The vague and conclusory allegations of conspiracy between defendants are *utterly without factual basis* in the discovery of the lawsuit and it does not preclude the entry of such a judgment for the defendants as plaintiff's claim of wrongful discharge was the foundation of the *Vaca* v. *Sipes* and Section 301 claims . . . summary judgment is hereby entered for the defendants . . . because of the *undisputed facts* of this action, defendants are entitled to judgment as a matter of law." (Emphasis added.)

The Seventh Circuit Court of Appeals, unanimously affirmed the decision of the district court. The Seventh Circuit said:

> "The plaintiff has not argued that the Union had an enforceable obligation to provide plaintiff with an escape period during the first ten days of each collective bargaining contract, nor have we found any authority requiring

defendants to do so.[5] Accordingly, for the reasons advanced in District Judge Flaum's attached memorandum opinion, which we adopt as our own, summary judgment for defendant was proper.

"Affirmed."

"5. At the oral argument defense counsel advised us that the General Counsel of the National Labor Relations Board had dismissed plaintiff's complaint about these escape periods."

ARGUMENTS AGAINST GRANTING WRIT.

The Petition for a Writ of Certiorari suggests no issues in this case which warrant review for any of the reasons set forth in Rule 19 of the Supreme Court Rules.

Thus, there are no "special and important reasons" set forth in Petitioner's Brief which would commend this Court's exercise of discretion and granting of the writ. Further, there is no other court of appeals' decision in conflict with the instant decision of the Seventh Circuit.

I. Summary Judgment in Favor of Respondents Was Properly Granted by the District Court and Affirmed by the Seventh Circuit as There Were, and Are, No Genuine Issues of Material Fact.

In an effort to meet the requirements of Supreme Court Rule 19, Petitioner asserts that summary judgment was improper and that, in any case, the process of summary judgment was, and always is, misused in the District Court for Northern District of Illinois.

Petitioner demonstrates a fundamental misunderstanding of summary judgment proceedings pursuant to the Federal Rules of Civil Procedure Rule 56. Petitioner has again disregarded the basic proposition that not just any factual issue will prohibit issuance of summary judgment; but rather, the fact(s) must be both *material* and *genuine*.

The district court's issuance of summary judgment in the instant case, as affirmed and adopted by the court of appeals, is entirely consistent with these basic principles. After the conclusion of discovery, there remained no genuine and material issue for the trier of fact. The court pierced the bald allegations of the Amended Complaint and concluded that there was no basis upon which to perpetuate a "non-existent issue of fact." Thus, as to the assertions that Petitioner withdrew from the Union on certain specified dates, the court found:

> "The dates of the notice of withdrawal and the pertinent provisions of the collective bargaining agreement are not in dispute, thus summary judgment on the issue as to the effect of plaintiff's notice of withdrawal is proper. *Cf. Local 9, Internat'l. Union of Operating Engineers* v. *Siegrist Const. Co.*, 458 F. 2d 1313 (10th Cir. 1972)."

As to the allegations of conspiracy, the court held that they were utterly "without factual basis." Yet, those bald and unsupported allegations have reappeared in the instant Petition.[1]

In his Petition to this Court, Petitioner once again insists that he is entitled to a trial since both the district court's and court of appeals' interpretation of the applicable provisions of the collective bargaining agreement conflict with his own interpretation. It is abundantly clear, however, that the interpretation of a contract is not an issue of fact but an issue of law. It is well established that when the sole issue to be resolved is whether or not, as a matter of law, the provisions of a contract apply to

1. Plaintiff's "conspiracy" theory is legally unsound. He apparently claims the "conspiracy" is evidenced by the collective bargaining process. Federal law, however, requires that employers bargain with representatives of employees with respect to their terms and conditions of employment. 29 U. S. C. § 158(a)(5). This Court has recognized that the latitude of this statutory duty to bargain is broad. *Ford Motor Company* v. *Huffman*, 345 U. S. 330, 337-338 (1953). In the instant case, the Company had a statutory duty to negotiate with the Union. What Plaintiff terms "collusion" and "conspiracy" was no more than the statutorily mandated bargaining process.

a set of undisputed facts, the case should be decided by summary judgment.[2]

It is respectfully submitted that the issuance and affirmance of summary judgment below was entirely proper. Petitioner has identified no reasons for this Court to issue a writ of certiorari herein. Indeed, there are no compelling issues in this case warranting review by this Court.

II. There Is No Conflict Between the Circuits Warranting Grant of the Requested Writ.

Petitioner also argues that the writ should be issued because of the decision in *Richardson* v. *Western Electric Company, Inc., et al.*, 443 F. 2d 974 (8th Cir. 1971), which he improperly suggests has created a conflict in the circuits. As he argued before the district court, Petitioner claims that this case is directly on point and controlling.

Certainly, Petitioner's studious avoidance of specificity in discussing the *Richardson* case was no mere oversight. That case was, contrary to the instant case, supported by massive evidence adduced as to specific conduct.[3] As the district court found, the material facts in the instant were undisputed and totally different than those relied upon by the Eighth Circuit. The conflict, if there is any, relates to the facts relied upon by the two circuits, not the law.

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2. *See e.g., Rigsby* v. *Mutual of New York*, 331 F. 2d 353, 354 (10th Cir. 1964), wherein the court stated:

> "The only issue was the application of the provisions of the contract to these facts. Under these circumstances, the trial court properly considered the matter on a motion for summary judgment. *Lopez* v. *Denver & Rio Grande Western R. R. Co.*, 227 F. 2d 830 (10th Cir.); *Wirtz* v. *Young Electric Sign Co.*, 315 F. 2d 326 (10th Cir.); *McCollar* v. *Euler*, 286 F. 2d 327 (10th Cir.)."

3. *See e.g.*, 443 F. 2d at 983, fn. 12.

CONCLUSION.

Based on the foregoing, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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